

ASSEMBLY BILL

No. 2

Introduced by Assembly Member Blakeslee

October 27, 2009

An act to add Division 13.6 (commencing with Section 21200) to the Public Resources Code, relating to the environment, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2, as introduced, Blakeslee. Environment: environmental mitigation.

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would establish the Regional Environmental Mitigation Program and would specify that the purpose of the program is to improve the success, efficiency, and effectiveness of actions implemented to mitigate the natural resource impacts of projects, by establishing the means to implement those actions on a regional basis. The bill would establish the program in the Natural Resources Agency and would require the agency to consider and implement mitigation requirements on a regional basis for projects that require mitigation based on federal, state, or local laws. The bill would require the agency to communicate, coordinate, and work with specified entities. The bill would permit the agency to engage in specified activities in order to implement the program. The bill would specify that a project that requires mitigation

under other provisions of law may, but is not required to, participate in the program.

The bill would establish the Regional Environmental Mitigation Account in the State Treasury. The bill would require the account to accept fees collected for the mitigation requirements for projects and disburse the funds for projects that fulfill mitigation requirements. The bill would require the agency to establish guidelines for the calculation, acceptance, and use of the fees. The bill would require the money in the account to be continuously appropriated and to be used to administer and implement the program and for any purpose associated with the mitigation of a project, including protection, restoration, enhancement, monitoring, capital improvements, as fencing, long-term management or defense, transaction costs, and administration.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 13.6 (commencing with Section 21200)
2 is added to the Public Resources Code, to read:

3
4 DIVISION 13.6. REGIONAL ENVIRONMENTAL
5 MITIGATION PROGRAM
6

7 21200. This division shall be known, and may be cited, as the
8 Regional Environmental Mitigation Program.

9 21201. The purpose of this division is to improve the success,
10 efficiency, and effectiveness of actions implemented to mitigate
11 the natural resource impacts of projects by establishing the means
12 to implement those actions on a regional basis.

13 21202. The Legislature finds and declares all of the following:

14 (a) Water, infrastructure, and other development projects may
15 require the mitigation of any adverse impact upon natural resources
16 caused by the development of a project or facility and required
17 pursuant to federal, state, or local laws, including those required
18 under the California Environmental Quality Act (Division 13
19 (commencing with Section 21000)).

20 (b) The mitigation of environmental impacts is usually handled
21 on an individual project basis and without coordination with, or
22 reference to, regional or statewide conservation priorities.

1 (c) This approach to mitigation results in unconnected projects,
2 decreased biological viability, increased long-term management
3 costs, and lost opportunities for meeting regional or statewide
4 conservation goals.

5 (d) To the extent feasible and appropriate to the impacted natural
6 resources, encouraging and directing mitigation projects to areas
7 identified as regional priorities will result in improved mitigation,
8 better conservation outcomes, improved management efficiencies,
9 and achievement of regional and statewide conservation goals.

10 21203. (a) The Regional Environmental Mitigation Program
11 is established in the Natural Resources Agency. The agency shall
12 consider and implement mitigation requirements on a regional
13 basis for projects that require mitigation based on federal, state,
14 or local laws.

15 (b) In implementing the program, the agency shall communicate,
16 coordinate, and work with the Department of Water Resources,
17 the Wildlife Conservation Board, the Department of Fish and
18 Game, the Department of Conservation, state conservancies, other
19 appropriate federal, state, or local governments or special districts,
20 or nonprofit organizations described in Section 501(c)(3) of the
21 Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that are exempt
22 from taxation under Section 501(a) of the Internal Revenue Code
23 (26 U.S.C. Sec. 501(a)), and that have among their purposes the
24 conservation of natural or cultural resources.

25 (c) In implementing the program, the agency may engage in the
26 following activities:

27 (1) Execute an agreement, a memorandum of understanding, or
28 other similar instrument to memorialize its understanding of any
29 communication, coordination, or implementation activities with
30 other governmental agencies or nonprofit organizations for the
31 purpose of meeting mitigation requirements on a regional basis.

32 (2) Identify priority areas within regions for mitigation purposes,
33 using information from the entities identified in this subdivision
34 as well as from other sources. Existing public lands and lands held
35 by nonprofit organizations for conservation purposes shall be
36 considered in the identification of priority areas.

37 (3) Make information available about priority areas for
38 mitigation and other related topics available to government
39 agencies, nonprofit organizations, project proponents, and others

1 for use in coordinating, collaborating, creating, prioritizing, or
2 directing mitigation projects on a regional basis.

3 (4) Direct mitigation projects toward priority areas identified
4 for mitigation pursuant to this subdivision, and authorize state
5 agencies and departments to direct mitigation projects toward the
6 priority areas identified for mitigation pursuant to this subdivision.

7 (5) Direct projects and funds to existing conservation programs
8 of the agencies and departments identified in this subdivision or
9 award grants or contracts to other entities identified in this
10 subdivision to implement the mitigation requirements of projects
11 on a regional basis.

12 (6) Accept mitigation fees to meet the mitigation requirements
13 of a project for deposit into the Regional Environmental Mitigation
14 Account created pursuant to the requirements of Section 21204.

15 (d) This division is not intended to create a new environmental
16 permitting or regulatory program or to modify existing
17 environmental laws or regulations. The division is also not intended
18 to interfere with, or prevent the existing authority of, an agency
19 or department to carry out its programs, projects, or responsibilities
20 to identify, review, approve, deny, or implement any mitigation
21 requirements.

22 (e) A project that requires mitigation under other provisions of
23 law may, but is not required to, participate in the program.

24 21204. (a) The Regional Environmental Mitigation Account
25 is hereby created in the State Treasury.

26 (b) The account shall accept fees collected for the mitigation
27 requirements of projects under the program and disburse the funds
28 to the projects that fulfill the mitigation requirements.

29 (c) Before accepting any fees, the Natural Resources Agency
30 shall establish guidelines for the calculation, acceptance, and use
31 of the fees. The guidelines shall give priority to the use of fees for
32 existing conservation programs of the agencies and departments,
33 the purchase of mitigation credits at mitigation or conservation
34 banks, or for the payment of mitigation fees within established
35 mitigation programs. All fees accepted shall be based on a
36 calculation of the full costs of implementing the required mitigation
37 project.

38 (d) Notwithstanding Section 13340 of the Government Code,
39 the money in the Regional Environmental Mitigation Account is
40 hereby continuously appropriated to ensure that mitigation

1 requirements are met in a timely and efficient manner and that
2 projects are not delayed. The money in the account shall be used
3 for the following activities:

4 (1) To administer and implement the program. No more than 3
5 percent of the funds deposited into the account may be utilized for
6 administrative costs for the program.

7 (2) For any purpose associated with the mitigation of a project,
8 including protection, restoration, enhancement, monitoring, capital
9 improvements, as fencing, long-term management or defense,
10 transaction costs, and administration.

11 (e) Fees shall be used within a timely manner so that the
12 mitigation purposes are realized and the public benefits ensured.
13 The agency shall use its best efforts to expend the funds within 18
14 months of acceptance.

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